Supreme Court, U.S.
FILED
OCT 9 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-409

IN THE

Supreme Court of the United States

October Term, 1985

DANIEL GLEN HUNT, by and through his father and next friend, EDWARD RAY HUNT, and EDWARD RAY HUNT and ELLEN HUNT,

Petitioners

v.

GUILFORD COUNTY BOARD OF EDUCATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION

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October 7, 1985

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Petitioners file this supplemental brief pursuant to Rule 22.6 of the Rules of the Supreme Court of the United States.

The petition in this case was received and docketed by the Clerk on September 10, 1985. On the same day, September 10, 1985, a notation in United States Law Week disclosed the existence of another petition for writ of certiorari, now pending in this Court, which presents the same question as presented by petitioners herein. That other case is *Massachusetts Hospital School v. Stock,* No. 85-40, in which the Commonwealth of Massachusetts seeks review of *Stock v. Massachusetts Hospital School,* 394 Mass. 437, 476 N.E. 2d 210 (1985) (Stock II). *See,* 54 U.S.L.W. 3151.

In *Stock II,* the Massachusetts Supreme Judicial Court determined that the plaintiff was entitled to an award of attorney's fees pursuant to 42 U.S.C. §1988, as a prevailing party with a substantial unaddressed constitutional claim. *Stock II,* 394 Mass. at 442, 476 N.E.2d at 213. The plaintiff, parent of a handicapped child had complained of various denials of procedural safeguards afforded by EHA. *Id.* at 439, 476 N.E.2d at 211. The Massachusetts court previously had held that the plaintiff parent had proven these procedural violations of EHA. Among the parent's complaints was the refusal of the defendant education agencies to conduct an administrative hearing on the substantive issue of the child's special education entitlement. *Stock v. Massachusetts Hospital School,* 392 Mass. 205, 212-213, 467 N.E.2d 448, 453-454 (1984) (*Stock I*). The *Stock I* court held that, because the failure of the defendant school system to provide administrative due process comprised statutory violations, it need not address the plaintiff parent's claims of denial of due process under the United States Constitution and 42 U.S.C. §1983. *Ibid.*

Nevertheless, the *Stock II* court agreed that the plaintiff-parent was entitled to attorney's fees under 42 U.S.C. §1988. In its holding, the *Stock II* court expressly relied upon this Court's guidance in footnote 17 in *Smith v. Robinson,* ___ U.S. ___, ___, 104 S.Ct. 3457, 3471, 82 L.Ed.2d 746 (1984). Also cited as support for the judgment in *Stock II* were *Rose v. Nebraska,* 748 F.2d 1258 (8th Cir. 1984); *Teresa Diane P. v. Alief Independent School District,* 744 F.2d 484 (5th Cir. 1984); and, *Quackenbush v. Johnson City School District,* 716 F.2d 141 (2d Cir. 1983). These are the same federal cases which your petitioners cite as conflicting with the decisions below in this case. The denial of EHA administrative hearing rights, as in *Stock,* is the same type of violation which petitioners in this case alleged as a claim under 42 U.S.C. §1983. The determination by the *Stock II* court, that the plaintiff-parent had presented a substantial denial-of-due-process claim under 42 U.S.C. §1983, is the converse of the decisions below in this case, holding that the plaintiff-parents failed to state a claim under 42 U.S.C. §1983.

The pending petition for writ of certiorari in *Stock* pre-

sents the following question: "Do the procedural safeguards set out in the Education for All Handicapped Children Act manifest Congress' intent to preclude resort to 42 U.S.C. §1983 on a due process challenge?" This is the same question presented by petitioners in this case, although stated so as to emphasize the state's position. In this case, the federal district court and court of appeals answered the very question presented by the *Stock* petitioners — in the affirmative. *See,* Cert. App. 6, 45-46, 51. The *Stock II* court answered the question in the negative, as did the federal court decisions upon which the Massachusetts Supreme Court relied.

The pendency of the petition of the Attorney General of the Commonwealth of Massachusetts, No. 85-40, seeking review of *Stock II,* underscores your petitioners' argument in this case that the question presented is an important federal statutory issue of national significance which has not been but should be settled by this Court. Further, the decision below of the Fourth Circuit Court of Appeals now is in conflict not only with other federal courts of appeals, but also represents a federal court of appeals' decision of a federal question in a way in conflict with a state court of last resort. Rule 17.1, U.S. Sup. Ct. Rules

Petitioners again respectfully urge the Court to issue its writ of certiorari to review the judgment below of the Fourth Circuit Court of Appeals.

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CERTIFICATE OF SERVICE

I certify that on the 7th day of October, 1985, I served the foregoing and attached Petitioners' Supplemental Brief in Support of Petition on Respondent by depositing three copies thereof in the United States Postal Service first-class, postage prepaid, addressed as follows:

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This the 7th day of October, 1985.

A. Frank Johns
Counsel for Petitioners